

NGO access to multilateral fora: does disarmament lag behind?

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International fora allow varying possibilities for the participation of non-state actors in their work. Typically, governments restrict the direct access of non-state actors to international fora by allowing only a limited group of officially accredited non-governmental organizations (NGOs) to attend meetings and then by variously enabling and constraining their participation. The limits on NGO access are exercised through application of established rules of procedure and through the practices agreed for the conduct of meetings and negotiations, even where these are 'informal'.

In many respects, non-state actors are confronted with similar challenges concerning their access to and influence of international bodies regardless of the issue—labour law, trade, environment, human rights or arms control. Although there are many similarities, there are also numerous differences in the extent to which non-state actors have direct access to fora. It is often suggested that the degree of NGO access to other multilateral fora, such as those dealing with environmental issues or human rights, is significantly greater than for disarmament fora. It is also argued that there is a corresponding impact on NGO ability to influence the content and implementation of these multilateral agreements.

Direct access to intergovernmental fora is only one aspect of non-state actor engagement in international processes. Non-state actors perform numerous functions in the creation, development and implementation of international agreements and conduct many of these activities independently of any specific international forum. Their diverse activities include research, highlighting of issues, 'setting' political agendas, assessing public opinion, influencing governments, proposing legal text, monitoring application of and even—on occasion—enforcing agreements. The effective performance of these individual functions does not necessarily require the direct access of non-state actors to specific multilateral fora, but the NGO influence can be marginalized by limiting it or by excluding NGOs altogether from formal processes perceived to be the exclusive domain of governments.

This article briefly describes some aspects of the historical development of NGO access to intergovernmental fora. It examines in more detail certain common features of NGO access to and engagement in multilateral fora, using environmental fora as an illustration alongside disarmament fora. It suggests that there are more similarities than differences between multilateral fora when it comes to non-state actor access. However, numerous fora provide a much greater degree of access and possibilities for NGO influence than is usual in the field of disarmament. The conclusion questions whether there is a logical reason for this 'divide', or has it to do more with traditional assumptions that continue to be applied by a conservative establishment reluctant to change?

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Development of NGO roles in international fora

NGO participation in international affairs is *not* a new phenomenon. As early as the eighteenth century, numerous NGOs contributed significantly to the development of international law dealing with economic, political and social issues.¹ NGOs were instrumental in influencing states as to the need for international regulation concerning, for example, the abolition of slavery, recognition of labour rights, reduction of tariff and non-tariff trade barriers, and the promotion of the rights of women. Many of the organizations promoting these campaigns had an international dimension and operated in ways that are not dissimilar from the activities of NGOs today. In this era one can find numerous examples of NGOs organizing parallel workshops, producing briefing documents, pamphlets and 'newspapers', directly lobbying government officials and delegates, providing technical expertise and even participating as members of official government delegations.

In the early part of the twentieth century, activities under the auspices of the League of Nations provided for a relatively extensive degree of NGO participation in a range of tasks. This access even included participation in those bodies dealing with economic and trade issues where direct access of NGOs today is seriously curtailed, for example in the World Trade Organization (WTO). NGO activities helped in the establishment of intergovernmental organizations (IGOs) such as the International Committee of the Red Cross and the International Labour Organization.

The formal processes for non-state actor involvement in the development of international law were notably ad hoc—at least until the establishment of the United Nations in 1945. Nonetheless, in this pre-UN period '... many initiatives grew from private activities by private citizens, an early harbinger of the more intensive activism of non-governmental organizations which marks international negotiations today.'²

While the formation of the United Nations provided new opportunities for intergovernmental dialogue, it also appeared to result in a generally reduced role for NGOs in the inter-governmental decision-making processes for a couple of decades. On the one hand, the UN Charter formalized the NGO arrangements used by the League of Nations, but on the other hand the contribution of NGOs was seen to decline or stagnate until the mid-1970s.³ Factors said to have influenced this include that the new mandates of governments and IGOs, including the UN and its specialized agencies, increased the need for 'in-house' expertise that hitherto had been provided by NGOs.⁴

In some respects the environmental field fell outside this pattern. As no dedicated United Nations body was immediately established for protection of the environment, the agreement to create the International Union for the Protection of Nature (IUCN) in 1948, with membership from both governments and NGOs, provided a focal point for environmental NGOs active at the intergovernmental level. This may have helped to set a general pattern of recognition of NGOs in the intergovernmental environmental area in the decades that followed. In 1992, the comprehensive plan of action for the environment known as Agenda 21 spelled out the potential contribution that NGOs could make towards realizing sustainable development. It noted that NGOs '... possess well-established and diverse experience, expertise, and capacity in fields ... of particular importance to the implementation and review of environmentally sound and socially responsible sustainable development ... [and that the resources of NGOs] should be tapped, enabled and strengthened ...'.⁵

The same could be said of NGOs active in almost every field, not just those concerned with the environment or sustainable development. In numerous ways and in many areas of policy development, NGO involvement has increased dramatically since 1992 although the trend was initiated at differing times in earlier decades depending on the fora. This appears to be a function of a number of factors. These include: a proliferation in the number of NGOs; enhanced and more diverse support and

membership of a number of these NGOs (and thus more secure financing of their activities); new skills and improved technologies enabling enhanced communication of ideas and programmes between NGOs and also with their diverse constituencies; and developments in the attitude of a number of IGOs concerning their formal relationships with NGOs. This last aspect has been advanced not least of all by a number of IGOs developing and implementing measures intended to facilitate NGO contributions to policy design, decision-making, implementation and evaluation of IGO activities.⁶ At best, disarmament fora have lagged behind in recognizing these dynamics, let alone in implementing changes in long-held practices.

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The last few years have witnessed the emergence of what have been called extensive, essentially global, networks of networks. They have elements both of a broad NGO coalition and also a new political movement. In disarmament, we saw the emergence of the International Campaign to Ban Landmines, which united a diverse group of individual NGOs, active in fields such as development, refugees, humanitarian action and victim assistance, to fight for a common goal. In the environmental field, we see environmental groups, corporate groupings, anti-corporate organizations, anarchists, labour, community, developmental groupings, local 'organizers' and large numbers of otherwise non-affiliated but engaged citizens. This 'grouping' constructs complex, often shifting alliances and frequently challenges what are by now seen as traditional and overly state-dominated processes for non-state actor involvement in international fora.⁷ There is consequently not only a tension between these 'activists' and states but sometimes also a tension between those non-state actors seeking to maintain and enhance NGO access to a forum and those non-state actors who are questioning the forum's legitimacy, roles, functions and what—if any—role non-state actors should play within them.

NGO diversity

Who precisely do we mean when we refer to NGOs? The classical definition of the term NGO can be interpreted so broadly as to capture the activities of intergovernmental organizations (IGOs) as well as the entire spectrum of civil society. Essentially, the traditional definition potentially encompasses all entities that go beyond the individual but which do not have the direct authority of the state.⁸ Nowadays most commentators define NGOs along the lines of 'private organizations that are neither established by government nor by international agreement, and which are capable of playing a role in international affairs by virtue of their activities' or as 'private international organizations that serve as a mechanism for cooperation among private national groups in international affairs'.⁹

In practice there is a tendency to lump all NGOs together as a grouping of 'pressure' or 'special interest' entities, whereas often the only common feature they share is the notion of 'organization'. In reality, numerous different types of NGOs have emerged as actors in the development of international law, including the scientific/expert community, non-profit organizations and associations, trades unions, private companies or business associations, legal practitioners, academics and individuals. And if NGOs are diverse, the totality of non-state actors is even more so!

One finds an enormous range of NGOs accredited to multilateral bodies and institutions—some with global reach, some with only local concerns and interests. Their objectives are sometimes divergent and even conflicting. For example, in recent years there has been a growing number of 'environmental NGOs' established primarily for the defence of collective or individual corporate interests. These NGOs may gain accreditation to environmental fora, even if there are numerous reasons to believe that their core focus is on preventing measures that would actually enhance environmental protection. There is a similar trend in disarmament fora. For example in the context

of international negotiations concerning the illicit traffic of small arms, representation was accredited similarly to lobbies wanting no new regulations in the small arms trade that might affect their 'business' and NGOs in favour of increased gun control efforts.

Unsurprisingly, therefore, it has been noted that '... the multitude of groups is so disparate and varies along so many dimensions—size, organization, objectives, location, staffing, funding sources, membership, strategy, life cycle—that it is hard to generalize about their activities or impact.'¹⁰

Given the diversity of potential inputs, an essential challenge facing governments is to find ways to utilize the expertise available from non-state actors in order to ensure that international fora can take and implement the best possible decisions and also ensure this happens without them becoming

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overly burdened by special interest groups with perhaps narrow and sometimes conflicting agendas.¹¹ Equally, there needs to be a recognition by governments that a decision to deny or overly limit the extent of non-state actor access to intergovernmental fora implies a world view where states are perceived to be the primary agent for analysis and action—a position which at best would no longer appear to be universally applicable and is potentially counter-productive.

Roles of NGOs in influencing international fora

NGOs intervene at different points in the 'life cycle' of international law development and implementation. Individual NGOs may seek to use various kinds of influence at the different stages of the process. Additionally an NGO might concentrate its activities, choosing not to address all or even most of the stages of the process.

For descriptive purposes, the life cycle of international agreements can be divided into four phases. 'Agenda-setting' is that stage of the policy process when the nature and scope of a problem are being identified and the need for international regulation is being determined. The 'negotiation-bargaining' stage is when the actual process of negotiating and bargaining occurs, traditionally regarded as an activity in which only sovereign states participate. Once the deals are done and new policies or rules are agreed, there ensues a two-phase process: an 'implementation' phase, which typically consists of mainly national process to execute the agreements reached at international level; and a 'compliance-enforcement' phase, which concerns processes to ensure that states comply with the newly created international obligations.¹²

AGENDA SETTING

Typically, international institutions and Conferences of Parties leave the responsibility for setting the agenda and deciding formally on its adoption exclusively to the States Parties to the treaty. However, in some fora an issue may be placed on the agenda for formal consideration at the request of an NGO—however it still usually requires the support of at least one Member State. Here disarmament fora tend to follow the most restrictive path, with no formal NGO input on agenda setting being allowed or encouraged.

Perhaps in recognition of the reality that NGOs generally have few if any rights to place an issue formally on the agenda of an intergovernmental meeting, NGOs do exercise informal power in several ways. Through their activities and information they can shape the way in which various matters are addressed, the priority given to them and the way in which governments interact in seeking to resolve issues. Typically 'NGO agenda setting' occurs outside of the formal intergovernmental process—through direct dialogue with politicians and officials, through scientific bodies, via the media or by public-focused activities, or often a combination of these. Thus, it is possible for NGOs to ensure that an issue is placed on the 'official' agenda and strongly influence how the subsequent debate is framed.¹³ In this regard, there is no difference between the area of disarmament and any other field of NGO activity.

Yamin notes, citing Wapner, that:

'The power that NGOs have to define a problem, outline the scope of its solution and to mobilise public pressure in support of their definition is difficult to measure in an objective fashion, precisely because it operates outside the formal sphere. It is more difficult to grasp because it cannot be equated with, or reduced to, the kind of power exercised by States. The latter has a coercive (law-enforcement) element and is exercised through formal channels, whereas the former operates informally and is voluntaristic [sic] in nature. The problematic nature of operationalising different notions of power and then analysing who exerts how much and in which context, should not, however, detract from the very real significant role NGOs play in agenda-setting procedures at the national and international level.'¹⁴

Moreover, difficulties can arise when NGO involvement in the early definition of a problem, and its solution, is weak or non-existent. Analysis of the decade-long effort of mainly northern governments to press for a global forest convention illustrates this well. In the run-up to the 1992 Rio Earth Summit, G-7 governments backed international negotiations for a global forest convention.¹⁵ It soon became apparent that these governments lacked sufficient support from NGOs to achieve their goal. Few of the leading northern and southern NGO actors in the field had worked out clearly what the 'global forest problem' was and whether it, in fact, required a coordinated international response in the form of a legally binding convention.¹⁶ This experience demonstrates how even powerful governmental interest in a particular product may be insufficient to generate adequate support for its objective and that efficient and effective outcomes may require involvement of non-state actors from the outset, not only when the process becomes deadlocked.

NEGOTIATION AND BARGAINING

Much of the 'wheeling and dealing' with respect to negotiating and implementing international issues is done between sovereign states; NGOs have a limited role. Often NGOs have limited access and influence at this stage. The ability of NGOs to influence policy-makers at this point in the process depends on what 'goods' NGOs have to offer (in particular, expert advice and public opinion).

NGOs as experts

As noted earlier, Charnovitz suggests that while governments relied heavily on NGOs for expert advice prior to the establishment of the UN, this practice subsequently declined for some decades. During recent years, the increase in density of regional and global interconnected networks and the

growing recognition that the biophysical, institutional and economic realities have to be treated simultaneously have made devising solutions to perceived problems more complex. NGOs can and do build connections across boundaries, both political and hierarchical. This puts them in a position where they can represent constituencies not currently well represented or address issues not prioritized (or well understood) by states, e.g. ecosystem integrity, intergenerational equity, etc. Governments have looked anew to NGOs to provide expert scientific, technical and policy advice. From a narrow 'arms control' or 'disarmament' perspective, many of these interconnected issues may appear of little relevance. Yet from a broader perspective of 'security' (especially human security), these issues are vital and inseparable. The security community should be informed by this debate at least as much as it is by the issues of particular weapons systems and stockpiles.

NGOs have built up considerable expertise in many of the scientific, economic, social and technical disciplines and are key members of the 'epistemic communities' underpinning the development and ongoing work of many international and regional regimes.¹⁷ By publishing reports and providing up-to-date information to states through briefing papers and, in many cases, behind-the-scenes discussions with policy-makers about the implications of research sometimes even before it has been published in peer-reviewed journals, NGOs add considerably to government capacity to undertake international negotiations on an informed basis. NGO provision of information, analysis and policy recommendations is by no means new, but the degree it appears to be currently relied upon by many governments may be more widespread than previously—equally in the disarmament field as it is in others.

NGOs as lobbyists

Even with well-recognized expertise and effective public pressure, the influence of NGOs in international negotiations also is affected by the degree of access NGOs have to policy-makers and relevant documentation on the status of negotiations. Particularly where access is limited at international fora, much of this lobbying work takes place at the national level and expert symposia with the formal international conferences constituting just one venue for lobbying activity.¹⁸ Nevertheless, international fora are often where the final trade-offs are made and new rules agreed. Thus, the possibility of lobbying at the international level is an important strategic component of NGO work and one that is increasing—owing to the ever-growing range of issues being addressed at the regional and international levels, and the multiplication of the number of fora where such issues are discussed.

Formal access to policy-makers and documents at the international level is determined by treaty provisions and detailed rules of procedure determined by the States Parties and tempered by evolving state practices. An examination of these formal rules in international treaties reveals that there is some variety but also many common features.¹⁹ Typically, NGOs may attend public meetings of the conferences of the parties as observers 'if the parties so agree'. NGOs who wish to attend typically have to demonstrate that they 'are qualified in matters covered by the Convention', have to have informed the Secretariat of their desire to take part, and meet the formal accreditation procedures set in place. These last requirements vary considerably, and range from very basic checks on the bona fide character and non-profit-making nature of the NGO to detailed formal requirements relating to the governance rules of the NGO, its structure and constitution, and having an official seat of business. Sometimes the criteria require an NGO to make a declaration of support for a convention or an international institution's core objectives.²⁰

As far as formal access to documentation is concerned, practice varies widely from one forum to another. Some international organizations make most if not all documentation available in

advance and on request, others limit advance access to accredited NGOs. Some provide all documents including working papers to accredited NGOs, others provide only some documentation and exclude, for example, working drafts. The development of the Internet has made formal distribution of documentation easier in general, and has also facilitated the direct transfer of materials between governments and NGOs. In addition to the formal transfer of material, informal links between governments and NGOs, and between NGOs themselves, have been facilitated by the Internet, especially in cases when NGOs are unable to attend meetings—be it for lack of access due to closed meetings or refusal of accreditation, or simply due to cost or scheduling difficulties.

Most secretariats have NGO liaison officers who facilitate information flows to/from NGOs and provide administrative support for NGO side-events or displays, an increasing feature of international meetings. Some regimes have, in addition, established 'clearing house mechanisms' for NGO material and/or provide Internet links to relevant NGO web sites on their own web pages. However, the distribution of materials and proposals from NGOs shows a marked variation between fora. At one end of the spectrum, NGOs are expected to produce and circulate their materials to decision-makers themselves. Some NGOs do this by advance mailings where possible, not only as this may be more effective in informing or influencing a state's position, but also because frequently the only provision for distribution of NGO material at international meetings consists of a table or two provided outside the meeting room for displaying documents. Sometimes NGO materials may be displayed only after having been 'vetted' by the Secretariat or Chair of the meeting. Disarmament fora tend towards this end of the spectrum. At the other end of the range, one finds fora that have formal procedures to facilitate the submission of documents from NGOs (the rules being equally applicable to governments), which are then formally distributed by the Secretariat as official documents.

In most circumstances, accreditation is the first step towards NGO participation. The nature and scope of the participation that is thus provided varies widely. Some fora limit access to NGOs to merely monitoring plenary discussions, and perhaps allowing one or more NGO interventions at an opening or closing plenary session or at a special NGO session. This is typical for disarmament fora. Even then, the possibility of making oral interventions is at the discretion of the Chair and may be subject to a veto by any contracting party. Subsidiary bodies or working groups may be and often are closed. In the more restrictive fora, parties often claim that the last-minute deals or delicate horse-trading needed to gain consensus would be made more difficult, if not impossible, if each discussion were to happen under the watchful eye of numerous observers.

At the other end of the spectrum, some fora provide NGO access to plenary meetings, subsidiary bodies, informal working groups and allow NGOs to intervene in all of these. In the case of the International Maritime Organization (IMO), the principal UN body dealing with the safety of shipping and the protection of the marine environment, for example, the rules explicitly provide for NGOs with Consultative Status to take the floor in order to introduce their own documents, make formal proposals on topics on the agenda, respond to papers or statements by governments and allow them to take part in intersessional work or correspondence groups. In these more open fora, parties appreciate the expert input from NGOs at the various stages of negotiation and the NGOs, for their part, typically are aware of the informal 'limits' on their participation and tailor interventions accordingly (although even the best efforts of NGO diplomacy may at times give rise to objections from states).

What is notable about international disarmament fora is that the formal access of NGOs is almost invariably at the lower end of the spectrum. In addition, when compared for example to environmental fora, the range of variability in access between fora is relatively narrow. However, there is a second group of features of NGO participation that are common to many international fora, including both environmental and disarmament institutions.

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One form of NGO participation consists of NGO representatives being included on national delegations. Some countries now regularly include representatives of NGO constituencies both as a means of increasing input from these groups as well as a way to enhance legitimacy. The use of non-national technical, scientific or legal experts to assist national delegations in complex negotiations is also becoming more widely accepted.²¹

Advances in modern communications, including the Internet as mentioned earlier but also mobile phones and other telecommunications technologies, have enhanced the access of NGOs even where the formal rules limiting access still are applied. In the last few hours of the climate negotiations in the Hague in 2000, for example, some NGOs were able to 'number crunch' the figures for various competing proposals in more or less 'real time' and get these to delegates. What counted was not that NGOs had no physical access to the individual meeting rooms, so much as whose access to information and delegates made them effectively 'insiders'.²² While this shows that limited direct access can be 'managed' by those with the requisite resources and contacts (and ingenuity!), it still begs the question of whether the diversity of expertise and opinion in the NGO community is put to the best use by placing barriers in their way to direct and recognized access.

The distinction between 'insider/outsider' NGOs is a loose and shifting one that varies from one forum to another. Well-established, recognized NGOs or particular individuals with good contacts with key national and international decision-makers are typically 'insiders' that are regularly consulted. So too are the NGOs representing prominent corporate interests. As far as direct lobbying is concerned, the industry lobbies tend to operate in ways rather similar to the environmental NGOs, albeit that the industry representatives have far more funding. However, in other respects, the ability to influence governments is very different, as 'big industry' enjoys privileged access to governments on a scale not enjoyed by others.

A further consequence of this 'insider/outsider' distinction, is that whilst the 'insiders' and 'process-minded' NGOs continue their partnership and peaceful lobbying work within international institutions, increasing numbers of newer types of NGOs are working largely outside of these formal processes. Perhaps the best known example of this non-process based *modus operandi* at present is the so-called 'anti-globalization movement' whose members often pursue their goals outside of the formal processes but who also challenge the formal processes through characteristically disruptive (but, for the most part, peaceful) actions. The fact that the WTO and other major intergovernmental 'players' in the market globalization process remain effectively closed to NGOs and what little access that currently exists for a select few NGOs has yet to show that it has made a meaningful difference in the ways these bodies work and the decisions taken by them, has certainly spurred the evolution of this movement.

ENSURING COMPLIANCE—NGOS AS 'ENFORCERS'

As noted earlier, compliance has two aspects—the actual implementation at the national level of international agreements, and the mechanisms to ensure compliance once this is done. While NGOs play a role in both stages, the former typically is a process of national legal measures and will not be addressed here.

The perceived failure of democratic processes to hold governments and international organizations to account for obligations arising from international agreements has resulted in growing interest in using court proceedings at both the national and international levels.

In the field of the environment, the intellectual foundations for NGOs to see themselves as 'legal guardians' of environmental interest was laid down in a seminal article written in the early

1970s, 'Should Trees Have Standing?'²³ As a direct result of this suggestion, NGOs have since routinely brought cases involving environmental interests to court in the United States. Elsewhere, in particular since the 1992 Rio Conference, national courts in many countries have been far more open to NGO interventions and cases brought range from disputes about administrative breaches of agreed rules to protecting asserted fundamental rights.²⁴ Many legal and procedural hurdles to bringing such cases still exist. For example, restrictive interpretations of rules concerning *locus standi* remain and stand in the way of legal enforcement attempts by NGOs or where international agreements provide no legal basis for enforcement except between directly concerned states. Where this happens (all too often), NGO efforts at enforcement have to be indirect—for example by highlighting non-compliance through protests, or 'whistle blowing' to authorities and/or through the media. Where these indirect attempts at enforcement succeed (all too seldom), it is a further example of NGO ingenuity rather than an example of robust systems having been put in place previously.

Although similar obstacles exist for disarmament NGOs seeking to ensure compliance through legal means, the initiative to seek advisory opinions from the International Court of Justice (ICJ) on the legality of nuclear weapons originated with NGOs and showed that some, albeit limited, opportunities exist.

Concluding comments

Limiting the access of non-state actors—including NGOs—to intergovernmental bodies implies a world view where states are perceived to be the primary agent for analysis and action. Such a view suggests that the only weight to be given to information provided or to ideas promoted by non-state actors is an assessment of to what extent such propositions might support or disrupt a government's policy. If this is the case, denying access to non-state actors is as much an instrument of states' manipulation of a multilateral forum as it is a matter of making the business of international bodies 'manageable' for the purposes of decision-making. By not accrediting NGOs to their respective forums, or selectively allowing limited access, inter-governmental bodies effectively exclude numerous non-state actors from their business and thus reinforce a traditional, simplistic state-centric view of international law, policy development and implementation.²⁵

Giving non-state actors a more effective role means more than simply changing the rules of accreditation and procedure—it means a fundamental reorientation. Wuori, for example, suggests that NGOs are often considered as the 'clearest expression' of the emerging transnational civil society.²⁶ In this view, NGOs are regarded as the 'keepers of the conscience' of the emerging international moral community, whilst governments are seen to be (at best) one step behind and struggling to see clearly the correct path forward in part because of conflicting vested interests. Present governmental and intergovernmental structures and processes that exclude or minimize the influence of NGOs may be seen, in this context, as lacking in (moral) legitimacy despite the formal, legal authority of governments.²⁷

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Recent decades have seen decision-making in numerous areas move away from central governments to be transferred both upwards towards international and supranational levels, and downwards to local and regional concerns.²⁸ This trend is certainly far from uniform and it does not apply to all policy areas (and whether the nation-state is in decline or not—and if it is what will replace it—are issues far beyond the scope of this paper). Nonetheless, it is often noted that the state is not 'big

enough' (in light of the scale and nature of the challenges facing the planet and society), and 'too big' (in continuing to insist on exclusive formal control of policy formation and implementation in too many areas).

The increasing popularity and numbers of NGOs, the social research findings demonstrating that in many cases the public trusts NGOs more than governments, and low voter turnout in most democracies do indeed call into question the political authority of the state and with it the consensual-based system of international law making. Opponents of enhancing the role of NGOs in international fora often point to the non-elected nature of NGOs and ask rhetorically whose interests they represent. However, one could also question that if a majority of voters did not give positive consent to their elected representatives through voting, and where there is popular support within a country for a particular policy orientation that is flatly rejected by its government, then whose interests are these governments actually representing at the international level and on what basis?²⁹ That some international organizations, like the WTO, can take actions that effectively override domestic laws also exposes the frailty of the legitimacy of international organizations. This is compounded in the case of the WTO as it is seen to operate behind closed doors and largely beyond parliamentary or NGO scrutiny.³⁰

It is against this background that Wuori suggests that NGOs be seen from the perspective of the legitimization void that has appeared in the eroding political system.³¹ Their independence, and critically, their capacity to transcend the customary ethnic, family, tribal or national barriers is a credible basis for them to act at an international level as the 'designated conscience of the world'.³² Indeed, numerous international institutions, particularly those searching for new mandates or struggling for effectiveness, have begun to grasp the fact that NGOs provide a source of legitimacy and political support in these times. This is reflected by the 1994 statement on NGOs by then UN Secretary-General Boutros Boutros-Ghali. He stated that '... non-governmental organizations are a basic form of popular representation in the present world. Their participation in international organizations is, in a way, a guarantee of the political legitimacy of those international organizations.'³³

There can be no doubt that international institutions are here to stay for the foreseeable future, but it is also obvious they will need to evolve and develop considerably if they are to be effective in meeting both current and future challenges. They will continue to encounter ever-increasing pressure

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from non-state actors for increased transparency, access and accountability. NGOs also will need to evolve as they reject being mute observers of international processes or mere vehicles for providing information to decision-makers. They are political players in their own right, focused on the delivery of end results. The combination of their activities within and outside of conference rooms clearly reveals that formal legal rules attempting to maintain

a peripheral role for NGOs in international affairs represent an inaccurate, short-sighted and obsolete view of the international policy-making process and legal order. And in all these respects, international disarmament fora are no different from their counterparts in other fields—except in that they are amongst the least progressive in recognizing this fundamental weakness.

Notes

1. S. Charnovitz, 1997, 'Two Centuries of Participation: NGOs and International Governance', *Michigan Journal of International Law*, vol. 18, no. 2, pp. 183–286.
2. P. Sands (ed.), 1994, *Greening International Law*, New York, The New Press, p. xxiv.

3. Article 71 of the UN Charter provides that 'the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations that are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations, after consultations with the Members of the United Nations concerned.' See also S. Charnowitz, *op. cit.*
4. See, for example, P.W. Birnie and A.E. Boyle, 1992, *International Law and the Environment*, Oxford, Clarendon Press; P. Sands, 1995, *Principles of International Environmental Law*, Manchester, Manchester University Press.
5. See Agenda 21, Chapter 27, available at www.un.org/esa/sustdev/agenda21chapter27.htm
6. *Ibid.*, para. 3.
7. See, generally, N. Klein, 2000, *No Logo*, New York, Harper Collins.
8. P. Wapner, 1996, *Environmental Activism and World Civic Politics*, Albany, SUNY, p. 158.
9. See Charnovitz, *op. cit.*, p. 186.
10. A. Chayes and A. Chayes, 1995, *The New Sovereignty*, Cambridge, Harvard University Press, p. 252.
11. It has been suggested that there is a need to find a 'common language' to evaluate the contribution NGOs make to international life. In the absence of a real understanding of the underlying patterns, it is 'impossible to assess the contribution NGOs claim for themselves, or others contribute to them, in any meaningful way.' See F. Yamin, 2001, 'NGOs and International Environmental Law: A Critical Evaluation of their Roles and Responsibilities', *Review of European Community and International Environmental Law (RECIEL)*, vol. 10, no. 2, p. 149.
12. See, for example, P. Newell, 2000, *Climate for Change: Non-State Actors and the Global Politics of the Greenhouse*, Cambridge, Cambridge University Press; P. Wapner, *op. cit.*, p. 158. It is important to note that, in practice, these various stages are rarely sequential and—more often than not—the development of new norms is contemporaneous with enforcement of existing rules as well as an ongoing process of implementation (including revision of existing instruments in light of experience).
13. Wapner, for example, gives as an example the way Greenpeace develops sophisticated campaigns, political and media strategies centred on communicating the need for governments to 'act' on a particular issue in a certain way. These are based on Greenpeace's assessment of where its agenda-setting efforts may be most effective and which may not necessarily involve direct engagement in any particular intergovernmental forum. Wapner, *op. cit.*, p. 157. Additional examples of the design and conduct of Greenpeace campaigns can be found in: J. Maté, 2001, 'Making a Difference: A Case Study of the Greenpeace Ozone Campaign', *Review of European Community and International Environmental Law (RECIEL)*, vol. 10, no. 2, p. 190; C. Rose, 1998, *The Turning of the 'Spar'*, London, Greenpeace UK.
14. F. Yamin, 2001, *op. cit.*, p. 154.
15. F. Yamin and J. Cameron, 1991, "'Forests" Reports', *Yearbook of International Environmental Law*, Oxford, Oxford University Press, p. 213.
16. The discussions of the need, scope and (dis)advantages of a binding forest convention have continued under various multi-stakeholder processes established by the Commission on Sustainable Development (CSD), including the Intergovernmental Panel on Forests and the International Forum on Forests. See subsequent editions of the *Yearbook of International Environmental Law*, *op. cit.*, for details of how this process has evolved.
17. See, for example, P. Haas, 1989, 'Do Regimes Matter? Epistemic Communities and Mediterranean Pollution Control', *International Organization*, vol. 43 (Summer) and research cited by C. Gough and S. Shackley, 2001, 'The Respectable Politics of Climate Change: The Epistemic Communities and NGOs', *International Affairs*, vol. 77, no. 2, pp. 329–45.
18. P. Mucke, 1997, 'Non-Governmental Organisations', in F. Dodds (ed.), *The Way Forward: Beyond Agenda 21*, London, Earthscan, p. 100.
19. F. Yamin and T. Wassertein, 1999, *NGO Participation in the FCCC*, the Foundation for International Environmental Law and Development (FIELD) Working Paper (March), which examined participation of NGOs in a number of international environmental regimes.
20. The International Maritime Organization (IMO), for example, has a detailed set of rules governing the relationships with NGOs, setting out the purposes for which consultative status is to be granted, the basic criteria to be applied in determining to grant such status, and grounds for removing consultative. See *Basic Documents, Volume 1*, International Maritime Organization (London, 1986) as amended. For additional examples, see also Yamin and Wassertein, *ibid.*
21. In this latter respect, the role of lawyers from the Foundation for International Environmental Law and Development (FIELD) in advising countries in the Alliance of Small Island States (AOSIS) in the climate negotiations is an early and impressive example.
22. See for example, M. Grubb and F. Yamin, 2001, 'Climate Collapse at the Hague: What Happened, Why and Where Do We Go From Here?', *International Affairs*, vol. 77, no. 2.
23. C. Stone, 1972, 'Should Trees Have Standing?', *Southern California Law Review*, vol. 45, p. 450.
24. For an example of the latter, see A.G.M. La Viña, 1994, 'The Right to a Sound Environment in the Philippines: The Significance of the Minors Opasa Case', *Review of European Community and International Environmental Law (RECIEL)*, vol. 3, no. 4. This case allowed an NGO to bring claims on behalf of future generations.

25. See Yamin, op. cit., p. 149.
26. M. Wuori, 1997, 'On the Formative Side of History: The Role of Non-Governmental Organisations', in M. Rolon, H. Sjöberg and U. Svedin, *International Governance on Environmental Issues*, Dordrecht, Kluwer.
27. For a detailed account of the need to consider the legitimacy of international institutions, see D. Bodansky, 1999, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law', *American Journal of International Law*, vol. 93, p. 596.
28. See, for example, Wuori, op. cit.
29. On the problem of democracy in a globalized context, see generally D. Held, 1995, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, Oxford, Polity Press.
30. The same can be said for many disarmament fora, particularly those dealing with nuclear weapons and other weapons of mass destruction. For the details of WTO access and functioning see Bodansky, op. cit.; also J. Cameron and R. Ramsey, 1995, *Participation by Non-Governmental Institutions in the World Trade Organization*, Study No. 1, Global Environmental and Trade Study (GETS), Minneapolis, MN, GETS.
31. Wuori, op. cit., p. 166.
32. Ibid.
33. Cited by Mucke, op. cit., ch. 8.